APPLICATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO MUNICIPAL ANNEXATIONS OF LAND

Bozung v. Local Agency Formation Commission. Bozung forcefully reaffirms the supreme court's policy of interpreting the California Environmental Quality Act (CEQA) so as to afford the fullest possible protection to the environment. The decision provides an excellent illustration of the manner in which the court has chosen to rely upon the broad policy statements of the legislature as well as the underlying values of CEQA in order to give the widest possible scope to CEQA's ambiguous terms. Specifically, the case holds that Local Agency Formation Commissions (LAFCO's) must prepare environmental im-

1. 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975) (per curiam, adopting with minor modification the court of appeal decision rendered by Presiding Justice Kaus and concurred in by Justices Hastings and Stephens).


3. The court stated:
   It is, of course, too late to argue for a grudging, miserly reading of CEQA. As the 1972 additions and amendments to CEQA prove, we correctly gauged the legislative intent in Friends of Mammoth... when we concluded that the Legislature intended CEQA “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

13 Cal. 3d at 274, 529 P.2d at 1024, 118 Cal. Rptr. at 256.

4. A LAFCO is an important county agency which the California legislature created in 1963 when it passed the Knox-Nisbet Act, ch. 1808 § 1, [1963] Cal. Stat. 3657, as amended CAL. GOV’T CODE §§ 54773-99.5 (West Supp. 1975). One LAFCO exists in each California county, generally consisting of two county representatives, two city representatives and one representative of the general public. Id. § 54780. Its purposes are to discourage urban sprawl and to encourage the orderly formation and development of local government agencies. Id. § 54774. A LAFCO must attempt to accomplish its purposes in two ways. First, it is responsible for preparing and updating a “sphere of influence” plan which establishes the “probable ultimate physical boundaries” of each municipality in the county. Id. See also §§ 54774.1 and 54774.2. Secondly, it has the power to approve or disapprove the incorporation of cities, the formation of special districts, and the annexation of territory to municipalities. Id. § 54790. For discussion of the origin and functions of LAFCO's, see R. Legates, CALIFORNIA LOCAL AGENCY FORMATION COMMISSIONS (1970); Note, LAFCO: Is It in Charge of Special Districts?, 23 HASTINGS L.J. 913 (1972).
impact reports (EIR's) before approving proposals to annex land that is scheduled for imminent development.

Bozung was an action for mandamus and declaratory relief brought in response to efforts by Kaiser-Aetna Corporation (Kaiser) to begin developing a 10,000 acre expanse of unincorporated Ventura County land. Kaiser had almost completed a master plan for the entire development and was ready to begin constructing the project's first phase on a 677 acre parcel known as the Bell Ranch. Because Ventura County would not rezone the Bell Ranch, Kaiser attempted to change jurisdiction over the Ranch to a city which would be receptive to its development proposal. Accordingly, Kaiser convinced the Ventura LAFCO to shift the Bell Ranch to the City of Camarillo's sphere of influence and to approve Camarillo's subsequent petition for annexation. It was to halt this annexation and thereby stymie Kaiser's development that the action in Bozung was instituted. The trial court entered judgment for the defendants after sustaining their demurrers without leave to amend. The court of appeal reversed that decision, however, and the supreme court substantially adopted the court of appeal's opinion.

In holding that LAFCO's must comply with the provisions of CEQA, Bozung raises as many questions as it answers. This Note will initially examine the issues created by the court's application of the CEQA terms "project" and "significant effect on the environment." It will then discuss the questions generated by the court's decision to involve LAFCO's in the EIR process. Finally, it will analyze the impact which Bozung may have both upon LAFCO's and upon CEQA itself.

5. The requirement that public agencies prepare and evaluate EIR's for certain activities which they carry out or approve is the means by which CEQA safeguards the environment. See CAL. PUB. RESOURCES CODE §§ 21100, 21151 (West Supp. 1975). An EIR informs decisionmakers and the general public of the probable effects of a project on the environment. It also suggests measures which might be used to mitigate these effects and identifies alternatives that might be used instead of the proposed project. Id. §§ 21061, 21100 (West Supp. 1975); 14 Cal. Admin. Code §§ 15012, 15027 (1975).

6. The facts in Bozung, unless otherwise indicated, have been summarized by the court in 13 Cal. 3d at 268-70, 529 P.2d at 1020-22, 118 Cal. Rptr. at 252-54.

7. Petitioners included Richard Bozung, a Ventura County resident and taxpayer; Roger Boedecker, a county resident and taxpayer who lived near the Bell Ranch; and the Ventura County Environmental Coalition. Although the court denied Mr. Boedecker's attempt to bring a class action suit, it granted him standing on the basis of a "very real and substantial interest" in accordance with Scott v. Indian Wells, 6 Cal. 3d 541, 492 P.2d 1137, 99 Cal. Rptr. 745 (1972). Petitioners Bozung and the Ventura County Environmental Coalition were granted standing by alleging that they would be harmed by the environmental effects of the annexation; the court found this sufficient, citing United States v. SCRAP, 412 U.S. 669 (1973).

8. Defendants included the Ventura County LAFCO, the City of Camarillo and the respective commissioners and council members of each of these bodies. Kaiser was also active in the defense of the suit as the real party in interest.
I. Annexation Approval as a CEQA "Project"

a. The Statutory and Historical Context

CEQA, as originally enacted in 1970, did not define the term "project" even though it required an EIR only if a "project" was being carried out. The task of clarifying this term and thereby interpreting the scope of CEQA was thus left to the judiciary. In *Friends of Mammoth v. Board of Supervisors*, the supreme court supplied a definition of "project" by relying upon the provisions of the National Environmental Policy Act (NEPA), which served as the model for CEQA. The term "project," the court indicated, includes activities directly undertaken by public agencies, activities funded by public agencies, and activities requiring a public permit or approval. Accordingly, *Friends of Mammoth* held that governmental regulation of private activity, as well as direct government involvement in public works, may be a "project" under CEQA.

The California legislature endorsed the *Friends of Mammoth* decision by including the NEPA-inspired definition of "project" in its 1972 amendments of CEQA. It provided in section 21065:

"Project" means the following:
(a) Activities directly undertaken by any public agency.
(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

10. The general mandate of CEQA provides: All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment.
11. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).
14. *Friends of Mammoth* held that the Board of Supervisors of Mono County was required to prepare an EIR before approving a condominium complex to be constructed on rustic Mammoth Lake if the construction "may have a significant effect on the environment." 8 Cal. 3d at 262, 502 P.2d at 1059, 104 Cal. Rptr. at 771.
It is not clear whether the legislature recognized that this definition of "project" was broad enough to encompass almost any governmental activity or approval, however, for the only clarification of the term supplied by the legislature was to limit it to "discretionary" activities.\footnote{17}

In 1973, the Guidelines prepared by the Office of Planning and Research provided some additional clarification of the meaning of "project." The Guidelines sharpened section 21065(a) by listing several examples of activities "directly undertaken" by public agencies.\footnote{18} They also provided examples of activities which section 21065 does not include.\footnote{19} The Guidelines' examples did not succeed, however, in providing a clear test for determining which governmental activities are "projects" under CEQA.\footnote{20}

The statutory and historical context in which the Bozung court decided whether an annexation approval is a "project" was thus one in which the legislature seemed to have consciously delegated its power to the judiciary. The legislature's initial failure to define "project" at all was remedied only by its wholesale adoption of the vague federal definition. The Bozung court was thus afforded a wide latitude within which to interpret this definition and thereby determine the scope of CEQA. Consequently, it looked to the legislature's broad policy statement to provide guidance in resolving the term's ambiguities.\footnote{21}

\footnote{17. The legislature provided: Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps . . . . CAL. PUB. RESOURCES CODE § 21080 (West Supp. 1975) (originally enacted ch. 1154 § 2.3, [1972] Cal. Stat. 2272, eff. Dec. 5, 1972).

\footnote{18. The examples given by the Guidelines construe activities "directly undertaken" by public agencies to include: public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700. 14 Cal. Admin. Code § 15037(a) (1975).

\footnote{19. These are activities specifically exempted by state law, proposals for legislation, continuing administrative activities, continuing maintenance activities, feasibility or planning studies, and submissions of proposals to a vote of the people. 14 Cal. Admin. Code § 15037(b) (1975).

\footnote{20. \textit{See id.} § 15037.

\footnote{21. The policy statement of the legislature upon which the supreme court relied in \textit{Friends of Mammoth} and \textit{Bozung} is contained in sections 21000 and 21001 of CEQA. After section 21000 presents the necessity for CEQA and states the general legislative intent to protect the environment, section 21001 more specifically provides: The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with}
b. The Bozung Interpretation of “Project”

Confronted with CEQA’s broad definition of “project” as well as the legislature’s intent to maximize environmental protection, the Bozung court held that an annexation approval is a project under both section 21065(a) and section 21065(c). This holding produced the desirable result of ensuring the evaluation of annexation proposals from an environmental perspective. Unfortunately, the result was far better than the reasoning behind it. With regard to section 21065(a), the court found that an annexation approval is “an a fortiori case” of an “activity directly undertaken” by a public agency. The only reasoning given for this conclusion was that the preparation of a general plan, which is only a “tentative” agency action, is considered a “project” by the Guidelines; therefore the approval of an annexation proposal, which is an “irrevocable” action, must be an “a fortiori” project. With regard to section 21065(c), the court gave no reasoning at all. It merely declared that a LAFCO annexation approval “involves the issuance to a ‘person’ . . . that is to say, a city, of an entitlement for use.” This inadequate reasoning in interpreting the term “project” constitutes the major shortcoming of Bozung, an otherwise fine decision.

As the preceding paragraph indicates, the court’s application of the term “project” was completely result-oriented. The court realized that the Kaiser development would have a significant environmental impact which might not be evaluated objectively by the City of Camarillo. It therefore had to find the existence of a “project” in order to require the LAFCO to prepare an EIR and evaluate the environmental

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22. See text accompanying note 16 supra. Since the court found that the 1972 amendments and the 1973 Guidelines merely clarified the original provision of CEQA, it held that section 21065 of the statute and section 15037 of the Guidelines were the applicable provisions to be construed, even though they did not become effective until after the action in Bozung had been initiated. 13 Cal. 3d at 275, 277, 529 P.2d at 1024, 1026, 118 Cal. Rptr. at 256, 258.
23. Id. at 278, 529 P.2d at 1026-27, 118 Cal. Rptr. at 258-59.
25. 13 Cal. 3d at 278, 529 P.2d at 1026-27, 118 Cal. Rptr. at 258-59.
26. Id. at 278-79, 529 P.2d at 1027, 118 Cal. Rptr. at 259.
detriment from a regional perspective. Although the court's environmental consciousness is praiseworthy and although it produced the correct decision, the court's lack of reasoning is inexcusable. Bozung's lack of a principled basis for its holding not only complicates the definition of the term "project;" it also disregards the issue of the intended scope of "project." As the following discussion illustrates, the court could have reached the same result and could have avoided the shortcomings of its holding by using a narrower and more principled approach.

1. Complicating the Definition. The Bozung court should not have held that a LAFCO annexation approval constitutes a "project" under section 21065(a). By stating that the "irrevocable" nature of a LAFCO approval is sufficient to make it an a fortiori case of an "activity directly undertaken" by a public agency, the court implies that all irrevocable governmental approvals may be "projects" within section 21065(a). This misconstrues the statutory language. Section 21065(a) was not designed to deal with government approvals at all. Rather, activities "directly undertaken" by a public agency are those activities initiated by the agency. In this sense, a city's general plan or a LAFCO's sphere of influence plan would be an activity "directly undertaken." An annexation approval, however, is not initiated by a LAFCO but is issued only in response to a petition. It is therefore not "directly undertaken."

By interpreting section 21065(a) to include discretionary government approvals, the court has not clarified CEQA's ambiguous definition of "project;" it has only complicated it further. The holding has created new uncertainty for public administrators regarding which public agency approvals are projects under CEQA. That is, even if an approval does not involve the issuance of a "lease, permit, license, certificate or other entitlement for use" under section 21065(c), it may now still be a project under section 21065(a). This application of subsection (a) would apparently construe the approval of a municipal budget or a city-sponsored social program as a project under CEQA. The inconsistency of applying subsection (a) in this manner is apparent from the fact that to do so eliminates the need for subsection (c) altogether. That is, if every approval or "entitlement for use" under section 21065(c) is also an "activity directly undertaken" under section 21065(a), then subsection (a) subsumes subsection (c) and the latter provision becomes purposeless.

The Bozung court should have held the LAFCO annexation approval to be a project only under section 21065(c). This would have

28. Id.
been a reasonable application of CEQA’s definition of “project” since permitting a city to annex land is arguably an “entitlement for use” of the land. This approach would have achieved the desired result of having the LAFCO prepare an EIR, and it would have avoided further complicating the definition of “project.”

2. Disregarding the Scope. Even if Bozung had held that annexation approvals are projects only under section 21065(c), the court’s summary reasoning would have failed to consider the issue of the proper scope of “project.” The Ventura LAFCO’s primary argument was that annexation approvals should not be subject to CEQA because the scope of CEQA was meant to include only activities which effect a “physical change” in the environment. Since annexation approvals only determine the political jurisdiction of agencies and therefore effect no physical change, the LAFCO reasoned that these approvals should not be “projects” under CEQA.

Justice Clark refined the Ventura LAFCO’s arguments in a vigorous dissenting opinion. He argued that the legislature intended to limit the scope of “project” to those situations in which public agencies either directly engage in land use or directly regulate the use of land by private parties. Under his analysis, an annexation approval cannot be

29. It is possible that the court invoked section 21065(a) in order to avoid a challenge by defendants under CEQA’s “grandfather clauses.” Before Friends of Mammoth and the 1972 amendments to CEQA it was not clear that public agency approvals of private development projects required EIR’s. In order to protect those who had received prior approvals, the amendments provided that a legal challenge to such an approval could only be filed before December 5, 1972. CAL. PUB. RESOURCES CODE §§ 21169-70 (West Supp. 1975). The challenge could then be successful only if the party receiving the approval had not detrimentally relied upon it. Id. § 21170. These “grandfather” provisions, however, covered exclusively section 21065(c). They did not validate approvals under section 21065(a). Therefore, by defining the LAFCO annexation approval to be a project under subsection (a), the court removed the possibility that Kaiser or Camarillo could have the annexation approval subsequently validated under the grandfather clauses by proving detrimental reliance. B. Murphy, Application of CEQA to Annexation Proposals, Sept. 15, 1975 (unpublished note in California Law Review library). The very fact, however, that the grandfather clauses refer exclusively to section 21065(c) in providing exemptions from CEQA for prior approvals indicates that the legislature thought approvals would come exclusively under subsection (c) and would not be included under subsection (a).

30. Brief for Ventura County LAFCO at 26; Ventura County LAFCO’s Petition for a Hearing at 6-10.

31. Brief for Ventura County LAFCO at 26; Ventura County LAFCO’s Petition for a Hearing at 6-10.

32. 13 Cal. 3d at 289-96, 529 P.2d at 1034-39, 118 Cal. Rptr. at 266-71. Justice Clark’s refinement was essential since the LAFCO’s argument seemed to disregard the fact that Friends of Mammoth found a condominium approval to be a “project” even though it did not directly affect a physical change in the environment. See note 14 and accompanying text, supra.

33. Id. at 290, 529 P.2d at 1035, 118 Cal. Rptr. at 267. Justice Clark noted that Friends of Mammoth addressed itself only to land use activities such as “construction,
an “activity directly undertaken” by a LAFCO within the meaning of section 21065(a) because it does not directly involve land development. Likewise, it cannot be an “entitlement for use” within section 21065(c) because LAFCO’s are expressly prohibited from directly regulating the use of land. Justice Clark severely criticized the majority for failing to inquire into the intended scope of CEQA in order to establish some meaningful parameters for the scope of the term “project.”

The court could have responded to the objections raised by the Ventura LAFCO and Justice Clark and still have reached the same result in *Bozung*. Under the Knox-Nisbet Act, one of the primary functions of a LAFCO is “the discouragement of urban sprawl.” That is, LAFCO’s bear the responsibility for preventing cities from making undesirable expansions and destroying open space reserves. This regulatory power to determine whether municipalities should be allowed to utilize additional land clearly constitutes more than the power to determine the political jurisdictions of cities and counties. By noting that LAFCO’s have this limited but important land use function, the court could have rebutted Justice Clark’s objections and provided a principled basis for its environmentally protective decision.

Even if the court did not want to frame its opinion in terms of the LAFCO’s land use function, it should not have completely ignored the

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34. 13 Cal. 3d at 294-95, 529 P.2d at 1038, 118 Cal. Rptr. at 270.
35. *Id.* at 290, 529 P.2d at 1035, 118 Cal. Rptr. at 267.
37. This was made unmistakably clear by the legislature when it amended the Knox-Nisbet Act in 1974 to provide:

> It is the intent of the Legislature that local agency formation commissions establish policies and exercise their powers pursuant to this chapter in such manner to encourage and provide planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space lands within such patterns.

*Id.* § 54774.5. The legislature also expressly provided that a LAFCO should consider in determining the sphere of influence of each local agency:

> The existence of agricultural preserves in the area which could be considered within an agency’s sphere of influence and the effect on maintaining the physical and economic integrity of such preserves in the event that such preserves are within a sphere of influence of a local governmental agency.

*Id.* § 54774(h).

38. It is doubtful that the California Legislature intended to limit CEQA to land use activities. There are a large variety of government activities which may significantly affect the environment although they do not deal with land use. These include control over the use of no-deposit, no-return bottles; the continued approval of aerosol cans; the preservation of California’s wildlife population; and other similar activities not related to
issue of the intended scope of "project." The significance of the court's failure to consider this issue is that it may strengthen the arguments of those legislators who want to repeal or severely restrict CEQA. Their position is that if CEQA requires EIR's for governmental activities which are only marginally related to the environment, it will create unjustified costs and delays that will decrease new housing, increase unemployment and contribute to an already high rate of inflation. They believe that the scope of activities included as "projects" under CEQA must reflect a balancing of environmental protection against these other societal considerations. As indicated, the legislature itself failed to make this balancing when it supplied only a very ambiguous definition of "project." The court's summary reasoning in Bozung indicates that it will not supply this balancing either. Indeed, Bozung implies that the court will consider almost any governmental activity to be a "project" unless it is expressly exempted from CEQA.

the use of land. Consequently, the court might not have wanted to restrict its holding to this basis if it did not believe the basis to have potential validity.

39. As the scope of "project" stands after Bozung, any governmental activity will be a "project" if it falls into the court's broad interpretation of section 21065, has "a potential for physical impact on the environment, directly or ultimately," 14 Cal. Admin. Code § 15037(a)(1975), and is not expressly exempted. If the court felt that these limitations were sufficient, it should have expressly stated so. If it was not satisfied that these limitations were sufficient but it did not want to rely upon the land use limitation, it should have expressly left open the question of the scope of "project" or called upon the legislature for clarification. Either of these alternatives would have been preferable to the poor reasoning and summary treatment given to the term "project" in Bozung.

40. Several bills have been introduced in the California legislature to repeal or severely restrict CEQA. The most advanced of these is Senate Bill No. 502, introduced by Senators Berryhill, Richardson, Stull and Ayala on February 26, 1975. This bill was originally designed to repeal CEQA. However, by limiting the bill to "major revisions" of CEQA, the sponsors were able to get the approval of the Senate Committee on Finance. Senator Berryhill has stated that Senate Bill No. 502 will not only "substantially reduce the number and type of projects on which environmental impact reports will have to be filed," but it will also "reduce the type of information required to be contained in environmental impact reports" and "limit governmental agency comments." News Release, Senator Clare Berryhill (August 15, 1975).

41. Senator Berryhill has stated:
I am extremely pleased that the majority of the members on [the Senate Committee on Finance] agreed with me that the present law which requires needless environmental impact reports on hundreds of projects has cost the taxpayers of this state millions of dollars and contributed greatly to inflation and unemployment in California.

Id.

42. Cf. id.

43. See text accompanying note 17 supra.

44. The court's broad interpretation of section 21065, see text accompanying notes 23-26 supra, and its failure to consider the scope of "project" suggest that public agencies will have to request express categorical exemptions in order to be sure whether a particular activity does or does not constitute a project under CEQA. The provisions controlling categorical exemptions are located at 14 Cal. Admin. Code §§ 15100-15115 (1975).
This judicial approach reinforces the arguments of opponents of CEQA who claim that the Act has gotten out of control.\textsuperscript{45}

By its broad interpretation of section 21065 and its failure to consider the proper scope of the term "project," the Bozung court has thus passed the task of determining CEQA’s limitations back to the California legislature. This would not be a bad result, if properly achieved,\textsuperscript{46} since the legislature is the more appropriate body to make such determinations, even though the supreme court is judicially competent to do so. It is regrettable, however, that the court has spurred the legislature to action by indicating that it cannot be relied upon to judicially balance the benefits and burdens of CEQA.

\textbf{II. Significant Effect on the Environment}

\textit{a. The Statutory and Historical Context}

Even though an activity is found to be a "project," CEQA requires the responsible public agency to prepare an EIR only if the project "may have a significant effect on the environment."\textsuperscript{47} Accordingly, the second issue which the supreme court addressed in Bozung was whether an annexation approval "may" create a "significant" environmental effect.\textsuperscript{48}

The early development of the "significant effect" limitation paralleled the development of the term "project" in that its meaning was at all times either undefined or ambiguous.\textsuperscript{49} The Guidelines, however, did a much better job of clarifying "significant effect" than they did in defining "project." First, the Guidelines established the procedural framework within which the "significant effect" determination must be made.\textsuperscript{50} Secondly, they limited the term "significant effect" to refer

\textsuperscript{45. See News Release, Senator Clare Berryhill (August 15, 1975).}
\textsuperscript{46. See discussion at note 39 supra.}
\textsuperscript{47. \textsc{Cal. Pub. Resources Code} § 21151 (West Supp. 1975) reproduced at note 10 supra.}
\textsuperscript{48. For the court's discussion of this issue, see 13 Cal. 3d 279-81, 529 P.2d 1027-29, 118 Cal. Rptr. 259-61.}
\textsuperscript{49. The California legislature neglected to define the "significant effect" limitation in 1970 just as it had neglected to define "project." See ch. 1433 § 1, [1970] Cal. Stat. at 2780-83. Furthermore, although \textit{Friends of Mammoth} did construe the word "may" to mean that a \textit{potential} impact would require an EIR, the court expressly left the term "significant effect" for future determination. 8 Cal. 3d at 271, 502 P.2d at 1065, 104 Cal. Rptr. at 777. The legislature's 1972 amendments to CEQA finally did provide criteria for determining what constitutes a "significant effect." However, these criteria were still vague and ambiguous. See \textsc{Cal. Pub. Resources Code} § 21083 (West Supp. 1975).}
\textsuperscript{50. The Guidelines established a three-tiered approach. First, if a project is expressly exempted from CEQA, 14 Cal. Admin. Code §§ 15071-74 (1975), or if "it can be seen with certainty that the activity in question will not have a significant effect on the environment," \textit{id.} § 15060, then no further evaluation is necessary. Second, if there
only to an *adverse* impact on the environment.\textsuperscript{61} Third, the Guidelines provided that the *indirect* consequences of a project must be evaluated in addition to its direct consequences.\textsuperscript{62} Finally, they supplied an extensive list of effects which are to be considered significant in most projects where they occur.\textsuperscript{63}

After the adoption of the Guidelines, the supreme court further clarified the significant effect limitation. In *No Oil, Inc. v. City of Los Angeles*,\textsuperscript{64} which was handed down just one month prior to *Bozung*, the court noted that the word “significant” may encompass a spectrum of effects ranging from those which are more than trivial to those of truly momentous proportions.\textsuperscript{65} Faced with the question of which point on this spectrum should apply to the CEQA limitation, the court established a “low threshold requirement” for the preparation of EIR’s.\textsuperscript{66} That is, in order to insure that public agencies consider environmental data in marginal cases, the court concluded that an EIR should be prepared “whenever the action *arguably* will have an adverse environ-

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\textsuperscript{51} Id. § 15040. See also §§ 15080, 15081. Note, however, that the California Attorney General has stated his opposition to this restriction on the ground that beneficial impacts as well as adverse impacts may significantly affect the environment. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 82 n.15, 529 P.2d 66, 75 n.15, 118 Cal. Rptr. 34, 43 n.15 (1974).

\textsuperscript{52} Direct consequences are defined to be those “immediately related to the project,” such as an increase in population growth being facilitated by the construction of a new sewage plant. 14 Cal. Admin. Code § 15081(b) (1975). Indirect consequences are those secondary effects which follow the immediate impact of a project, such as pollution of an area's air and water from the increase in population growth. *Id.*

\textsuperscript{53} This list includes, among other items, any effect that:

1. Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

2. Has a substantial and demonstrable negative aesthetic effect;

3. Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

4. Results in a substantial detrimental effect on air and water quality, or on ambient noise levels for adjoining areas. . . . *Id.* § 15081(e).

\textsuperscript{54} 13 Cal. 3d 68, 529 P.2d 66, 118 Cal. Rptr. 34 (1974).

\textsuperscript{55} *Id.* at 83, 529 P.2d at 76, 118 Cal. Rptr. at 44.

\textsuperscript{56} *Id.* at 84, 529 P.2d at 76, 118 Cal. Rptr. at 44. The court expressly rejected the trial court's interpretation of “significant” which would have required an EIR only when “there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature.” *Id.* at 82, 529 P.2d at 75, 118 Cal. Rptr. at 43.
Moreover, the court interpreted the Guidelines to say that an impact will "arguably" be significant whenever "a substantial body of opinion" considers it so.58

The question whether an annexation approval "may have a significant effect on the environment" was thus presented to the Bozung court in a somewhat clearer context than was the question whether an annexation approval constitutes a "project." The court's task with regard to the significant effect limitation was to decide whether an annexation approval might generate effects that could satisfy even the "low threshold requirement" established by No Oil. Bozung demonstrates how low the court is willing to allow the low threshold requirement to get.

b. Indirect Environmental Impact

The importance of Bozung to the scope of CEQA's significant effect limitation lies in the court's finding of a potential adverse impact even though only very indirect environmental consequences were involved. The plaintiffs in Bozung conceded that the approval of Camarillo's annexation request by the Ventura LAFCO would have no direct impact upon the environment.59 Their argument was that CEQA requires the preparation of an EIR even when the adverse impacts are ultimate rather than immediate.60 By sustaining the plaintiff's viewpoint,61 the court held in effect that there was a sufficient causal relationship between the LAFCO's annexation approval and Kaiser's

57. Id. at 85, 529 P.2d at 77, 118 Cal. Rptr. at 45 (citing Judge Skelly Wright's opinion in Students Challenging Reg. Agency Pro. v. United States, 346 F. Supp. 189, 201 (D.D.C. 1972), rev'd on other grounds, 412 U.S. 669 (1973)).
58. No Oil, Inc. v. City of Los Angeles, 13 Cal. 3d at 86 n.21, 529 P.2d at 78 n.21, 118 Cal. Rptr. at 46 n.21 (relying on 14 Cal. Admin. Code § 15081 (1975)).
59. Opening Brief for Appellant at 53.
60. Id. at 53-54.
61. The court relied upon the wording of Friends of Mammoth and the Guidelines. It noted that Friends of Mammoth regarded the term "project" to appear to "emphasize activities culminating in physical changes to the environment . . . ." 13 Cal. 3d at 279, 529 P.2d at 1028, 118 Cal. Rptr. at 260 (citing 8 Cal. 3d at 265, 502 P.2d at 1061, 104 Cal. Rptr. at 773) (emphasis in original). It also noted that section 15037 of the Guidelines refers to "'physical impact on the environment, directly or ultimately.'" 13 Cal. 3d at 279, 529 P.2d at 1028, 118 Cal. Rptr. at 260 (emphasis in original). Both of these quotations, however, refer to the definition of "project," not the definition of "significant effect on the environment." A much stronger basis for the court's approval of the plaintiffs' contention lies in section 15081(b) of the Guidelines, which provides: "In evaluating the significance of the environmental effect of a project, the lead agency shall consider both primary or direct and secondary or indirect consequences," 14 Cal. Admin. Code § 15081(b) (1975). See note 52 supra. Although the court cited all of section 15081 in a footnote, 13 Cal. 3d at 279-80 n.21, 529 P.2d at 1028 n.21, 118 Cal. Rptr. at 260 n.21, and stated that it was applying the criteria of the Guidelines, 13 Cal. 3d at 281, 529 P.2d at 1029, 118 Cal. Rptr. at 261, it failed to emphasize the significance of section 15081(b).
potential damage to the environment to justify requiring the LAFCO to prepare an EIR.

The Bozung decision thus raises several questions regarding the scope and application of CEQA's significant effect limitation. For example, what is the impact upon CEQA of considering indirect consequences as well as direct consequences when evaluating the environmental effect of a project? The primary impact, of course, is to maximize the protective scope of CEQA. An analysis of Bozung indicates, however, that this expansion of CEQA's protective scope is accomplished only by a subtle shifting in the "project" being examined. In Bozung, the court defined the annexation approval to be "a project all by itself," not just one part of a larger project consisting of Kaiser's entire development program. Yet when the court considered the indirect consequences of the annexation approval, it was actually scrutinizing the potential consequences of Kaiser's construction program. This shift in focus demonstrates that the consideration of the indirect consequences of one project may be tantamount to indirectly approving or disapproving a completely separate project.

The shifting nature of the project raises the additional question of how remote potential environmental damage must be before CEQA no longer considers it to be the "effect" of the project originally being examined. That is, since CEQA implicitly rejects the concept of "proximate cause," what degree of causality does it require for a finding of significant effect? If a very remote impact will suffice, the finding that a project "may have a significant effect on the environment" becomes an almost automatic determination. Virtually every project could have a potential adverse impact on the environment, and express exemptions would provide virtually the only source of immunity from CEQA's EIR requirements.

Although Bozung did not establish a formal test for determining

62. 13 Cal. 3d at 285, 529 P.2d at 1032, 118 Cal. Rptr. at 264.
63. The court stated:
   This is not the case of a rancher who feels that his cattle would chew their cuds more contentedly in an incorporated pasture. No one makes any bones about the fact that the impetus for the Bell Ranch annexation is Kaiser's desire to subdivide 677 acres of agricultural land. . . .
   Id. at 281, 529 P.2d at 1029, 118 Cal. Rptr. at 261.
64. Kaiser argued vigorously that it would have to obtain so many intervening approvals from local agencies and special districts before it could develop the Bell Ranch that any ultimate impact upon the Ranch would be "too remote" from the LAFCO to be considered an "effect" of the LAFCO's annexation approval. Reply Brief for Kaiser at 58.
65. Exempt projects include emergency activities, feasibility and planning studies, and ministerial projects. 14 Cal. Admin. Code §§ 15071-73 (1975). For a more detailed list of projects determined to be categorically exempt from the provisions of CEQA, see the Guidelines, id. at §§ 15100-15.
how remote the consequences of a project may be, an examination of the opinion reveals the criteria which the court will probably use in marginal cases to decide whether an EIR is required. First, the court cited the potential severity of the ultimate impact, noting that the Bell Ranch annexation might lead to the construction of 3700 dwellings for 8000 new residents who would emit an additional 22,000 pounds of vehicle pollutants per day. Second, the court stressed the relative importance of the agency's decision in preventing the environmental impact. It noted that Kaiser's development was "apparently destined to go nowhere in the near future as long as the ranch remains under county jurisdiction." Finally, the court relied upon the probability of the detrimental effect occurring. It pointed out that it was not dealing with an abstract problem and that development in the Bozung situation was imminent.

Identifying the criteria used in Bozung does not answer the further question of how the court might apply these criteria in different factual situations. Would it balance the factors against each other? For example, would greater severity compensate for lower probability? What if a LAFCO has no reason to know whether the annexing city is more likely than the county to approve a subsequent development? What if there is less probability that landowners will try to develop? For example, would the court have reached the same decision if Kaiser had not yet prepared a development plan or if Kaiser had disavowed any intent to develop or if the land had been owned by many individuals rather than one large corporation? The court's response to such situations will eventually determine the true scope of the significant effect limitation. Until then, public agencies must regard Bozung as an indication that a potential indirect impact may be sufficient to constitute a potential "significant effect" on the environment.

66. 13 Cal. 3d at 281, 529 P.2d at 1029, 118 Cal. Rptr. at 261.
67. Id. This criterion is apparently a "but for" test of causality. That is, but for the LAFCO's approval, the development could not be initiated.
68. Id. With regard to the question of probability, the defendants and Kaiser argued in their briefs that it would be "pure speculation" to assume that all the necessary development approvals would be forthcoming from the local agencies and special districts. Reply Brief for Kaiser at 58. See Ventura County LAFCO's Petition for a Hearing at 15. They placed heavy reliance upon First Nat'l Bank v. Watson, 363 F. Supp. 466 (D.D.C. 1973), a NEPA case which held that the Comptroller of the Currency did not have to prepare an environmental impact statement before he could charter a new bank. The Watson opinion stated that the plaintiffs therein were asking the court to "speculate" that the new bank would "possibly" finance development that would contribute to urbanization and thereby affect the environment. 363 F. Supp. at 472. The defendants in Bozung argued that the plaintiffs were likewise asking the court to "speculate" about the remote and uncertain effects of the LAFCO's annexation approval. Reply Brief for Kaiser at 58-60. See Ventura County LAFCO's Petition for a Hearing at 15-17. Bozung is consistent with Watson, however. The distinction between the two cases is that the indirect impact in Bozung was sufficiently identified and sufficiently probable to escape the realm of speculation.
III. The LAFCO as Lead Agency

a. Determining the Lead Agency

When two or more public agencies are involved in a particular project, which one should be responsible for complying with CEQA? The legislature answered this question by providing that the agency with "primary responsibility" for the whole project shall be the "lead agency." This agency becomes solely responsible for assessing the project's environmental impact and preparing an EIR if one is found to be necessary. If there is a dispute concerning which agency should be the lead agency, the agencies involved may settle the problem among themselves or submit it to the Office of Planning and Research for resolution.

In Bozung, no dispute existed between the agencies. Both the Ventura LAFCO and the City of Camarillo agreed that Camarillo bore primary responsibility for Kaiser's development and therefore should prepare the EIR. The court, however, did not agree. It held that only the LAFCO could be the lead agency because the annexation approval was "a project all by itself" for which the LAFCO bore sole responsibility. Camarillo could not be the lead agency, the court implied, because it was the applicant for annexation and not the agency granting the approval.

The court in Bozung relied upon three fundamental policies of CEQA in holding the LAFCO responsible for preparing the EIR. First, CEQA requires the EIR to be prepared as early as possible in the

70. Id. § 21165; 14 Cal. Admin. Code § 15064 (1975).
72. See 13 Cal. 3d at 286, 529 P.2d at 1032, 118 Cal. Rptr. at 264.
73. Id. at 285, 529 P.2d at 1032, 118 Cal. Rptr. at 264.
74. See id. at 285, 529 P.2d at 1032, 118 Cal. Rptr. at 264. The court also added a dictum which suggests that even if the annexation request were not considered a project in itself but rather only one part of the entire Kaiser development project, the LAFCO would still be the lead agency because it would be the first agency to act. 13 Cal. 3d at 285-86, 529 P.2d at 1032-33, 118 Cal. Rptr. at 264-65. This dictum fundamentally misconstrues sections 15065(b) and 15065(c) of the Guidelines. 14 Cal. Admin. Code § 15065(b)-(c) (1975). Section 15065(c), upon which the court relied, provides that the first agency to act shall be the lead agency only if one agency cannot be said to have greater responsibility than the other for supervising the project as a whole. Since Camarillo clearly would have had greater responsibility for the entire Kaiser project under section 15065(b) due to its greater involvement and general governmental powers, it would have become the lead agency without section 15065(c) ever coming into play. The court's misapplication of these sections is significant because it confuses the method in which the lead agency must be determined when only one overall project is involved. That is, the court's dictum improperly indicates that the question of which agency acts first will be more important than the question of which agency bears the greatest responsibility for the single project as a whole.
development process so that it can serve as an environmental "alarm bell" that alerts the public and its responsible officials to potential environmental harm.\(^7\) Second, CEQA mandates that an EIR must consider potential environmental damage from both a local and "regional" perspective.\(^7\) In this regard, the court reasoned that a LAFCO's responsibility for the entire county should make it better qualified to appreciate the regional viewpoint.\(^7\) Finally, CEQA's objective of obtaining adequate consideration of environmental effects implies that an EIR should be prepared and evaluated by a disinterested public agency, one with no parochial self-interest at stake.\(^7\) The court questioned whether Camarillo, as the petitioner for annexation and the supporter of Kaiser's development of the Bell Ranch, could objectively complete an EIR.\(^7\)

Although the court's holding implies that a LAFCO will hereafter be the lead agency for all annexation approvals, it does not necessarily ensure that the LAFCO involved in a particular approval will prepare its own EIR. CEQA allows a lead agency to use an EIR prepared by another agency in connection with an earlier project as long as the circumstances of the projects are "essentially the same."\(^8\) Consequently, if a city requesting an annexation has already prepared an EIR for a project related to the annexation, the LAFCO can adopt the city's EIR. For example, if a city were to pre-zone a parcel of land within its sphere of influence before petitioning for the parcel's annexation, it would clearly have engaged in a project that required an EIR.\(^8\) Moreover, since a LAFCO can require a city to pre-zone a parcel prior to consider-

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77. 13 Cal. 3d at 283, 529 P.2d at 1030, 118 Cal. Rptr. at 262. For example, the LAFCO's regional responsibility should insure consideration of the negative externalities imposed upon other municipalities by the annexation.

78. Id.

79. Id. One nagging question left by Bozung, however, is whether the Ventura County LAFCO was acting any less at Kaiser's behest than was the City of Camarillo. The LAFCO first approved Kaiser's request to shift the Bell Ranch to the Las Posas sphere of influence, then approved a request to shift the Ranch to the Camarillo sphere of influence, then approved Kaiser's and Camarillo's joint annexation petition. Id. at 269, 529 P.2d at 1020-21, 118 Cal. Rptr. at 252-53.


81. See 14 Cal. Admin. Code §§ 15037(a)(1), 15081 (1975). Under Bozung's broad definition of "project" and liberal interpretation of "significant effect," a city's application for annexation might also be considered a separate project that requires a prior EIR.
ing the city's annexation proposal, the LAFCO can apparently force the city to prepare an EIR that the LAFCO can later adopt for its annexation approval. Thus, a LAFCO that does not wish to prepare an EIR can circumvent the Bozung holding and negate the regional perspective which the court sought to infuse into the EIR preparation process.

One possible way to preserve regional input is to require the LAFCO to prepare an EIR before the question of annexation arises. As previously mentioned, one of the LAFCO's primary functions is to prepare a "sphere of influence" plan that establishes "the probable ultimate physical boundaries" of each political subdivision within the county. Since this is an activity "directly undertaken" by the LAFCO and affects the environment in much the same way as preparation of a city's general plan, it appears to be a project under CEQA that necessitates an EIR. By requiring a LAFCO to prepare the EIR at the sphere of influence stage, before a particular annexation petition is filed, the court would ensure regional environmental input for all new development projects.

b. Problems of Early EIR Preparation

1. Availability of Necessary Information. Even if a LAFCO conscientiously prepares its own EIR at the annexation stage or the sphere of influence stage, a question exists whether the EIR will generally be meaningful so early in the development process. The problem is that the earlier an EIR is prepared, the less detailed is the information normally available. This raises the issue of how specific environmental information must be for an EIR to accomplish its objectives. If very detailed information is necessary for an EIR to pinpoint a potential impact and present a mitigating alternative, then it may be premature to prepare an EIR before a development plan has been completed for the land in question. CEQA is thus pulled in two different directions. It must require an EIR early enough in the development process to provide a timely warning of environmental danger and to allow flexible decision-making; on the other hand, it must permit the EIR to be delayed long enough to contain the essential information.

Bozung presented an unusual annexation situation in that a development plan had been completed. Such plans are usually not prepared

83. Note 4 supra.
until after annexation has been approved. To extend Bozung to require that a LAFCO prepare an EIR before a development plan exists therefore raises the issue whether meaningful information will be available. An examination of how a LAFCO can benefit from the information available to it, however, suggests that an EIR may be justified even as early as the sphere of influence stage.

One of the first steps in preparing an EIR is to complete a description of the "environmental setting" which catalogues the environmental composition of an area.\(^{87}\) This describes its soil, vegetation, terrain, species of animals, and other characteristics. By examining the environmental setting at the sphere of influence stage, a LAFCO could determine whether any development would create unavoidable or irreversible consequences. It might also determine that a particular use, such as heavy industrial use, would be particularly inappropriate in the area. These determinations might better enable the LAFCO to decide whether the area should be included within any city's sphere of influence.\(^{88}\) They would also provide developers with the earliest possible notice that environmental considerations may require limitations upon the use of that area.\(^{89}\)

At the time of an annexation approval, further information will become available. A LAFCO may use pre-zoning data to project population increases and the resultant effects upon ambient air quality

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88. Although a LAFCO cannot prevent development because the county may approve a construction project in an unincorporated area, it may be more difficult to develop under county jurisdiction since special services districts may have to be formed to provide water, electricity and other essential services. Even if the LAFCO does place a parcel within a city's sphere of influence, however, it may choose the city least inclined to approve a subsequent development which may prove harmful to the environment.
89. Since each county in California must have a general plan, Cal. Gov't Code § 65300 (West 1966); Op. Leg. Counsel, 1972 S. J. 8015, and since the preparation of a general plan is a project under CEQA, 14 Cal. Admin. Code § 15037(a)(1) (1975), it is arguable that the county, rather than the LAFCO, is the more logical choice to prepare the initial EIR for all unincorporated land. Because county preparation of the EIR would also provide a regional consideration of the environmental factors at a very early stage in the decisionmaking process, this would be an acceptable alternative to LAFCO preparation provided that the LAFCO used the county's EIR in establishing or amending its sphere of influence plan.

Note, however, that all general plans for counties had to be in existence by January 1, 1973, Op. Leg. Counsel, 1972 S. J. 8015. Since the Guidelines did not define general plans to be "projects" until December of 1973, 14 Cal. Admin. Code § 15037(a)(1) (1975), almost all of these plans were probably prepared without compliance with CEQA. Moreover, unless they were challenged within 180 days of their enactment, they are now valid. Cal. Pub. Resources Code § 21167(a) (West Supp. 1975). Consequently, California counties apparently will have to prepare EIR's only with regard to amendments of their general plans. In contrast, because the Knox-Nisbet Act established no deadline for the adoption of sphere of influence plans, see Cal. Gov't Code § 54774.1 (West Supp. 1975), many LAFCO's may still be in the process of adopting these plans and may therefore have to prepare earlier and more comprehensive EIR's.
and water quality. It may also use pre-zoning data to determine whether it makes any sense to allow a city to extend its borders before urbanizing its present "patchwork" core area.  

An EIR prepared at an early stage can thus contain information that enables a LAFCO to identify and mitigate potential impacts, even though no development plan is available.

2. Multiplicity of EIR's. The preceding paragraphs envision the preparation of a progressive series of EIR's which build up to the completion of a final, comprehensive EIR at the time each owner within the area seeks a conditional use permit. Even if each of these EIR's contains useful information, an issue still remains concerning whether this process is wasteful. Do the early EIR's lead to a needless duplication of effort at the later stages because the same information must be evaluated again by the agency that gives the final approval to the ultimate development project?

An examination of CEQA suggests that neither the holding of Bozung, nor an extension of Bozung to the sphere of influence stage, will seriously increase the duplication of effort among the agencies involved. First, information prepared by a LAFCO at an early stage of development may be directly incorporated into subsequent EIR's. Secondly, the preparation of an EIR at the annexation stage will require the LAFCO to consider very little information which it is not already obligated to consider under the Knox-Nisbet Act. Finally, if the LAFCO's EIR is prepared pursuant to a completed development plan as in Bozung, the annexing city will not have to prepare a subsequent EIR at all.

The fundamental duplication created by multiple EIR's is that other government agencies and the general public may be afforded more than one opportunity to comment on the same environmental information. If a developer is waiting to prepare a development plan until its annexation approval is obtained, the delay caused by multiple hearings could lead to increased interest expense. In the final analysis, how-

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90. Opening Brief for Appellant at 51-52.
91. See 14 Cal. Admin. Code § 15068 (1975). A city will normally use information developed by a prior EIR, although it does have the power to require a completely new EIR. Id.
94. See id. § 15085(d). Even this potential duplication may be limited by public agency discretion, id. § 15164, or by a developer's ability to apply the concept of vested rights to bar objections to points that were passed in prior EIR's.
95. Since this expense would be passed on to consumers, it could arguably create an even greater exclusionary force in the housing market against the poor and even the lower middle class. On the other hand, if the environmental inventory is completed at county expense during the sphere of influence stage, the EIR costs to the developer may actually be reduced.
ever, whether the potential cost of multiple EIR's is “wasteful” depends upon the value assigned to the benefits of early EIR preparation. In the Bozung court’s opinion, any burden from “premature and wasteful” paperwork would be clearly outweighed by the benefits of regional input, disinterested evaluation, and early warning of potential environmental damage.\(^{96}\)

**IV. The Impact of Bozung**

**a. The Effect Upon LAFCO’s**

The immediate thrust of Bozung is that LAFCO’s are no longer free to ignore the provisions of CEQA.\(^{97}\) This does not mean that LAFCO’s must prepare an EIR for every annexation proposal. It does mean, however, that they now have substantial evaluation responsibilities. LAFCO’s must now develop “objectives, criteria, and specific procedures” for evaluating projects and preparing environmental documents.\(^{98}\) They must also conduct an “initial study” for each annexation proposal to determine whether it may have a significant effect on the environment.\(^{99}\) If the initial study indicates no potential for adverse environmental impact, then LAFCO’s need only file a brief “negative declaration” and a “notice of determination.”\(^{100}\) If a substantial adverse impact may occur, however, they must prepare a complete EIR.\(^{101}\) This would entail the additional burden of circulating the draft EIR to other governmental agencies and conducting public hearings.\(^{102}\) These responsibilities are the direct consequence of the court’s holding that an annexation approval is a “project” under CEQA.

It is arguable that Bozung will require a complete EIR for very few annexation proposals since very few municipal annexations involve large developers with completed development plans. Future attempts to limit Bozung to the facts of the case, however, should not underestimate the court’s willingness to find an indirect environmental impact in other fact situations. LAFCO’s will probably now have to prepare a complete EIR for each annexation proposal except those involving only owners of small parcels not intended for immediate development. Moreover, the court’s liberal construction of the terms “project” and “significant effect” suggests that complete EIR’s may now be required for LAFCO’s other activities as well. These would include proposals to detach prop-

\(^{96}\) 13 Cal. 3d at 282-83, 529 P.2d at 1030, 118 Cal. Rptr. at 262.

\(^{97}\) Id. at 282, 529 P.2d at 1029-30, 118 Cal. Rptr. at 261-62.


\(^{100}\) Id. § 15083.

\(^{101}\) Id. § 15080.

\(^{102}\) Id. § 15085(d).
erty from a city, proposals to incorporate new cities, and the preparation or amendment of sphere of influence plans.\textsuperscript{103}

Even if \textit{Bozung} is interpreted to require an EIR in most annexation proceedings, the decision does not require a LAFCO to withhold approval of an annexation should the EIR forecast negative environmental consequences.\textsuperscript{104} CEQA has not been construed as a strong substantive mandate.\textsuperscript{105} Rather, it has been viewed as a procedural requirement that forces agencies to consider environmental effects when they balance the costs and benefits of a project. \textit{Bozung} did nothing to change this perception. In fact, the court held that there is nothing in the Knox-Nisbet Act that prohibits "wall-to-wall cities" if the LAFCO approves development in accordance with the procedural safeguards of CEQA.\textsuperscript{106} By requiring LAFCO's to prepare EIR's, however, \textit{Bozung} has compelled the LAFCO's to summarize their findings in a type of administrative record. This record will facilitate judicial review of future LAFCO decisions and may thereby open the door for stronger substantive review in future CEQA cases.\textsuperscript{107}

Although \textit{Bozung} does not absolutely require LAFCO's to protect the environment, it does increase their ability to do so. That is, by requiring LAFCO's to prepare and evaluate EIR's, the court has empowered them to deny annexation proposals even if their environmental considerations do not relate to the provision of municipal services or the prevention of urban sprawl. This has created in the LAFCO's an indirect but potent power to actually regulate land use; that is, if a specific development program is prepared for an area, the LAFCO has become another governmental veto unit at which the development can be disapproved.\textsuperscript{108} The LAFCO's power is not absolute since counties may permit development without a municipality petitioning for annexation or incorporation. The LAFCO's, however, possess greater power than they had prior to \textit{Bozung}. The pivotal question will be whether LAFCO's choose to use this power.

\textsuperscript{103} \textit{CAL. Gov't Code} §§ 54774, 54774.1, 54774.2, 54790, 54797.1, 54797.3 (West Supp. 1975).


\textsuperscript{105} The reviewing court has the power to reverse an agency's decision only if it finds a lack of substantial evidence or a prejudicial abuse of discretion. \textit{CAL. PUB. RESOURCES CODE} §§ 21168-68.5 (West Supp. 1975). The court is not to substitute its judgment for that of the agency. \textit{Id.}

\textsuperscript{106} 13 Cal. 3d at 288, 529 P.2d at 1034, 118 Cal. Rptr. at 266.

\textsuperscript{107} One commentator suggests that \textit{Friends of Mammoth} may have implied a substantive requirement that an agency adopt the feasible alternative least detrimental to the environment. Seneker, \textit{supra} note 85, at 185-86.

\textsuperscript{108} The LAFCO's indirect control over land use presents a clear message to developers to delay their preparation of development plans until the annexation stage has been completed. If they do so, developers may be able to avoid this early environmental hurdle. \textit{See} text following note 68 \textit{supra}. 552.
b. The Effect Upon CEQA

The only aspect of Bozung to have a potentially damaging effect upon CEQA is the court's interpretation of the term "project." As previously discussed, the court's application of section 21065(a) raises the possibility that any discretionary approval by a public agency may be a project under CEQA. This creates additional confusion among public agency officials who are already struggling with an ambiguous definition of the term. The impact from this confusion, coupled with the court's failure to consider the scope of the term "project," may further encourage legislative attempts to repeal or severely restrict CEQA. This would be an unfortunate result since CEQA, despite its faults, does provide some guaranty that environmental factors will be considered in public decisions. CEQA only needs to have its broad intent provisions harmonized with reasonable operative provisions. The court's interpretation of "project," however, failed to provide this harmony.

The effect of Bozung upon CEQA's "significant effect" limitation is much more beneficial. The court's consideration of indirect environmental consequences demonstrates a reasonable application of the Guidelines as well as the "low threshold requirement" established in No Oil. An examination of the opinion also indicates several criteria which the court might use in the future to determine how remote an impact may be and still require an EIR. Bozung thus deals explicitly with the potential scope of the significant effect limitation and suggests a reasoned approach to defining the ultimate parameters of that limitation.

The most beneficial impact of Bozung upon CEQA is the court's reinforcement of CEQA's underlying policies. By holding the annexation approval to be a project in itself and the LAFCO to be the lead agency on the project, the court emphasizes an EIR's need for early preparation, regional perspective and disinterested evaluation. Bozung also stresses that these fundamental policies outweigh any interest which the applicant for annexation may have in avoiding "premature and wasteful" paperwork. The court's aggressive enforcement of these policies notifies public officials to accentuate early regional involvement when dealing with a CEQA problem.

109. See text accompanying notes 27-29 supra.
111. See text accompanying notes 40-45 supra.
113. See text accompanying notes 54-58 supra.
114. See text accompanying notes 66-68 supra.
115. See text accompanying notes 75-79 supra.